

ORIGINAL
FILE

ORIGINAL
RECEIVED

NOV - 5 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Revision of Part 22 of the)
Commission's Rules Governing)
the Public Mobile Services)

CC Docket No. 92-115

To: The Commission

REPLY COMMENTS OF NEW PAR

Pursuant to Section 1.415(c) of the Commission's rules, 47 C.F.R. § 1.415(c), New Par hereby submits these Reply Comments in connection with the Commission's Notice of Proposed Rulemaking ("Notice"), 7 F.C.C. Rcd. 3658, in the above-captioned proceeding.

The comments submitted in response to the Notice overwhelmingly support most of the Commission's proposals. Several cellular commenters, however, expressed reservations over the Commission's proposal to eliminate the requirement that cellular licensees file Forms 489 upon implementing minor modifications to their systems.¹ These reservations are apparently rooted in the carriers' understanding that the Notice also proposed to eliminate protection against interference for these

¹ See, e.g., Comments of U.S. West Newvector Group at 9; Comments of U.S.T.A. at 3.

No. of Copies rec'd
List A B C D E

0 + 4

facilities constructed without the filing of a Form 489.² As a result, some of these carriers have advocated that the Commission retain the Form 489 filing requirement for minor modifications -- or at least make the filing of Forms 489 permissive -- to ensure that such facilities will be protected against interference.³

New Par submits that the filing of a Form 489 is unnecessary to ensure interference protection. Rather, the Commission should clarify that cellular licensees are entitled to interference protection for all cellular facilities -- including those constructed without the filing of a Form 489 -- so long as the cell's service area contour is contained within the licensee's CGSA. Indeed, the rules provide that new or modified cells whose service area contours are within (or coterminous with) the licensee's CGSA are protected from electrical

² The pertinent language is found in Appendix A, which discusses proposed Section 22.163:

We are proposing to eliminate the requirement that licensees notify the Commission of [minor] modifications. Of course, there would no record of the modifications in the station files or computer databases; consequently, these transmitters might not be protected from interference. Notice, 7 F.C.C. Rcd. at 3667 (emphasis added).

³ See, e.g., Comments of Vanguard Cellular Systems, Inc. at 2-3.

interference.⁴ Any contrary rule would discourage licensees from investing in the expansion and enhancement of their cellular systems. Further, were the Commission to extend interference protection only to those cells for which a Form 489 is filed, licensees would have an incentive to file Forms 489 for most, if not all, of their cells. This would be contrary to the Commission's goals of providing licensees greater flexibility and conserving Commission and industry resources.⁵

The absence of Form 489 filings will not produce uncertainty about where or how licensees will operate their cells. Licensees would still be obligated to disclose this information in accordance with prior frequency coordination guidelines contained in proposed Sections 22.150 and 22.907.⁶ Until now, frequency coordination among licensees, rather than Form 489 filings, has been the primary method for cellular carriers to

⁴ 47 C.F.R. § 22.903 ("The CGSA is the area within which cellular systems are entitled to protection [from interference] ...").

⁵ See Notice, 7 F.C.C. Rcd. at 3667.


⁶ The Commission should clarify proposed Section 22.150, which implies that licensees are required to prior coordinate only when they file "an application" for a station. *Id.* at 3693. As provided in proposed Section 22.907, frequency coordination would be required whenever facilities are modified, whether or not an FCC application or notification is required.

determine whether their operations will cause interference to, or receive interference from, other cellular licensees' facilities.⁷

Respectfully submitted,

NEW PAR

By:


Thomas J. Casey
Jay L. Birnbaum
Timothy R. Robinson
Skadden, Arps, Slate,
Meagher & Flom
1440 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-7000

Its Attorneys

Dated: November 5, 1992

⁷ In fact, a licensee generally would not rely exclusively on a Form 489 filing to evaluate possible interference since most Forms 489 are not available from the Commission's files for at least several days after the modification is placed into operation. Nevertheless, to the extent that the Commission were not to extend interference protection to licensees for minor modifications that are not represented by a Form 489, New Par concurs that the Commission must permit carriers to file Forms 489 regarding modifications for which they seek interference protection.

CERTIFICATE OF SERVICE

I, Timothy R. Robinson, do hereby certify that on this 5th day of November, 1992, a copy of the foregoing Reply Comments of New Par was mailed by first class U.S. Mail, postage prepaid, to the following persons:

John Cimko, Jr.
Chief
Mobile Services Division
Common Carrier Bureau
Federal Communications Commission
Room 644
1919 M Street, N.W.
Washington, D.C. 20554

Stephen Markendorff
Chief
Cellular Radio Branch
Federal Communications Commission
Room 644
1919 M Street, N.W.
Washington, D.C. 20554

Martin T. McCue
Linda Kent
United States Telephone Association
900 19th Street, N.W., Suite 800
Washington, D.C. 20006-2105

Frederick M. Joyce
Joyce & Jacobs
2300 M Street, N.W., Eighth Floor
Washington, D.C. 20037

Mark R. Hamilton
Cathleen A. Massey
McCaw Cellular Communications, Inc.
1250 Connecticut Ave., N.W., Suite 401
Washington, D.C. 20036

Steve Dussek
David Aas
McCaw Cellular Communications, Inc.
Paging Division
12112 115th Avenue, N.E.
Kirkland, WA 98034

William B. Barfield
David G. Richards
BellSouth Enterprises, Inc.
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, GA 30367-6000

Rodney L. Joyce
Ann Bavender
Ginsburg, Feldman & Bress, Chartered
1250 Connecticut Ave., N.W.
Washington, D.C. 20036

Eliot J. Greenwald
Scott R. Flick
Gregory L. Masters
Fisher, Wayland, Cooper & Leader
1255 23rd Street, N.W., Suite 800
Washington, D.C. 20037

Judith St. Ledger-Roty
Marnie K. Sarver
Kathleen A. Kirby
Reed, Smith, Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

R. Michael Senkowski
David E. Hilliard
Kurt E. DeSoto
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Carl W. Northrop
Bryan Cave
700 Thirteenth St., N.W., Suite 700
Washington, D.C. 20005

Richard S. Rodin
Karis A. Hastings
Hogan & Hartson
555 Thirteenth St., N.W.
Washington, D.C. 20004-1109

William J. Franklin
Pepper & Corazzini
1776 K Street, N.W., Suite 200
Washington, D.C. 20006

James P. Tuthill
Lucille M. Mates
Pacific Bell and Nevada Bell
140 New Montgomery St., Rm 1526
San Francisco, CA 94105

James L. Wurtz
Pacific Bell and Nevada Bell
1275 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Jack Taylor
International Mobile Machines Corp.
6116 Brassie Way
Redding, CA 96003

John T. Scott, III
Linda K. Smith
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Thomas E. Wheller
Cellular Telecommunications
Industry Association
1133 21st Street, N.W.
Third Floor
Washington, D.C. 20036

Thomas A. Stroup
Telecator, The Personal Communications
Industry Association
1019 19th Street, N.W.
Suite 1100
Washington, D.C. 20036

Leon T. Knauer
Kathryn A. Zachem
Kelley A. Baione
Janet Fitzpatrick
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Washington, D.C. 20006

Richard L. Biby
Communications Engineering Services, P.C.
6105-G Arlington Blvd.
Falls Church, VA 22044

James D. Ellis
William J. Free
Mark P. Royner
Southwestern Bell Corporation
One Bell Center, Rm 3524
St. Louis, MO 63101-3099

Carolyn C. Hill
ALLTEL Service Corporation
1710 Rhode Island Ave., N.W.
Suite 1000
Washington, D.C. 20036

Dr. George L. Schrenk
Comp Comm, Inc.
900 Haddon Ave., 4th Floor
Collingswood, NJ 08108

Daniel L. Bart
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Harold Mordkofsky
John A. Prendergast
Blooston, Mordkofsky, Jackson,
& Dickens
2120 L Street, N.W.
Suite 300
Washington, D.C. 20037

James F. Rogers
Raymond B. Grochowski
Latham & Watkins
1001 Pennsylvania Ave., N.W.
Suite 1300
Washington, D.C. 20004

Thomas P. Kerester
Barry Pineles
United States Small Business
Administration
409 3rd Street, S.W.
Washington, D.C. 20416

Thomas Gutierrez
J. Justin McClure
Lukas, McGowan, Nace &
Gutierrez, Chartered
1819 H Street, N.W., 7th Floor
Washington, D.C. 20006

Arthur Blooston
Robert M. Jackson
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, N.W., Suite 300
Washington, D.C. 20037

Michael Altschul
Jack W. Whitley
Cellular Telecommunications
Industry Association
1133 21st Street, N.W., Suite 300
Washington, D.C. 20036

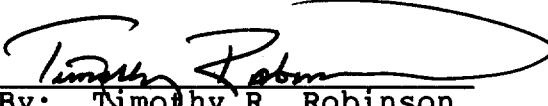
Louis R. du Treil
du Treil, Lundin & Rackley, Inc.
1019 19th Street, N.W., Third Floor
Washington, D.C. 20036

Tom W. Davidson
Paul S. Pien
Akin, Gump, Hauer & Feld, L.L.P.
1333 New Hampshire Ave., N.W.
Suite 400
Washington, D.C. 20036

Richard C. Rowlen
Vanguard Cellular Systems, Inc.
2002 Pisgah Church Road
Suite 300
Greensboro, N.C. 27408

Edward R. Wholl
NYNEX Mobile Communications
One Bule Hill Plaza
15th Floor
Pearl River, N.Y. 10965

Arthur K. Peters
David Carter
Sandra C. Peters
7020 N.W. 11th Place
Gainesville, FL 32605


By: Timothy R. Robinson